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10 MARTIN and NATHALIE BUGAY

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRISHA TENNYSON,

Plaintiff,

v.

COUNTY OF MONTEREY, et al.,

Defendants.

CASE NO. 5:24-cv-03191-EKL

**NOTICE OF MOTION AND MOTION TO
DISMISS FOR INSUFFICIENCY OF
SERVICE OF PROCESS [FRCP 12(b)(5)];
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
LAURIE MACHADO**

Date: February 12, 2025
Time: 1:30 p.m.
Ctrm: 7; Fourth Floor
Judge: Hon. Eumi K. Lee

Action Filed: 5/28/24
Trial Date: None

TO PLAINTIFF, TRISHA TENNYSON, IN PRO SE:

PLEASE TAKE NOTICE that on February 12, 2025, at 1:30 p.m. or as soon
thereafter as the matter may be heard in the above-entitled court before the Honorable
Eumi K. Lee, Courtroom 7, Fourth Floor, 280 South First Street, San Jose, California,
defendants, Darla Barnes-Smith, Debra Long, Samantha Martin and Nathalie Bugay,
will move the court to dismiss the action of pro se plaintiff, Trisha Tennyson, pursuant
to Federal Rules of Civil Procedure 12(b)(5), for insufficient service of process.

1 Plaintiff purported to serve the moving defendants at their former place of
2 occupation. The purported service was defective.

3 The motion will be based on this Notice of Motion and Motion, the
4 Memorandum of Points and Authorities filed herewith, the Declaration of Laurie
5 Machado served and filed herewith, and on the records, pleadings and files in this
6 action.

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8 DATED: October 15, 2024 FRIEDENTHAL, HEFFERNAN & BROWN, LLP

9 By *Daniel R. Friedenthal*
10 DANIEL R. FRIEDENTHAL, ESQ.
11 JAY D. BROWN, ESQ.
12 Attorneys for Defendants, ANIMAL FRIENDS
13 RESCUE PROJECT and MARIA SKYTTA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

4 Plaintiff, Trisha Tennyson, has filed a complaint for the loss of two cats.
5 Plaintiff claims that the various named defendants violated plaintiff's civil rights and
6 otherwise injured her. Plaintiff has made specific claims in regard to Animal Friends
7 Rescue Project. Moving defendants, Darla Barnes-Smith, Debra Long, Samantha
8 Martin and Nathalie Bugay, were at one time employed by Animal Friends Rescue
9 Project. As set forth in the attached Declaration of Laurie Machado, the Executive
10 Director of Animal Friends Rescue Project, none of the moving defendants were
11 employed at the time of purported service on September 23, 2024, and no one from
12 Animal Friends Rescue Project was authorized to accept service on their behalf.

14 II. SERVICE WAS IMPROPER UNDER FED. R. CIV. PRO. 4(e) AND THE
15 MATTER SHOULD BE DISMISSED UNDER FED. R. CIV. PRO. 12(b)(5)

16 Fed. R. Civ. Pro. 4(e) states that an individual may be served by “following the
17 state law for serving a summons,” or by delivering the summons and complaint to the
18 individual personally; leaving a copy at the individual’s dwelling or usual place of
19 abode; delivering a copy to an authorized agent.

20 California procedural law provides that an individual who is not served
21 personally may be served “at the person’s dwelling house, usual place of abode, usual
22 place of business.” California Code of Civil Procedure section 415.20(b).

23 In the present case, plaintiff left the summons and complaint in "c/o Animal
24 Friends Rescue Project." (Decl. of Laurie Machado.) None of the moving defendants
25 worked at Animal Friends Rescue Project, so it was clearly not their usual place of
26 business (or abode). Non one at Animal Friends rescue Project was authorized to
27 accept service on behalf of the moving defendants. (Decl. of Laurie Machado.)

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1 A motion to dismiss may be brought under Fed. R. Civ. Pro. 12(b)(5) for
2 insufficient service of process. “Once service is challenged, plaintiffs bear the burden
3 of establishing that service was valid under Rule 4.” *Brockmeyer v. May*, 383 F.3d
4 798, 801 (9th Cir. 2004). “If the plaintiff is unable to satisfy this burden, the Court has
5 the discretion to either dismiss the action or retain the action and quash the service of
6 process.” *Stevens v. Sec. Pac. Nat'l Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).

7 “The court may consider evidence outside the pleadings in resolving a Rule
8 12(b)(5) motion.” *Fairbank v. Underwood*, 986 F. Supp. 2d 1222, 1228 (D. Or. 2013).
9 The attached Declaration of Laurie Machado demonstrates that the purported service
10 on defendants, Darla Barnes-Smith, Debra Long, Samantha Martin and Nathalie
11 Bugay, was improper.

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13 **III. CONCLUSION**

14 Pursuant to the foregoing, plaintiff, Trisha Tennyson, has not satisfied the
15 requirements for service on an individual set out in Rule 4(e). Defendants, Darla
16 Barnes-Smith, Debra Long, Samantha Martin and Nathalie Bugay, respectfully request
17 that the Court dismiss plaintiff's complaint with prejudice under Rule 12(b)(5) for
18 insufficiency of service of process.

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20 DATED: October 15, 2024 FRIEDENTHAL, HEFFERNAN & BROWN, LLP

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22 By Daniel R. Friedenthal

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DANIEL R. FRIEDENTHAL, ESQ.

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JAY D. BROWN, ESQ.

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Attorneys for Defendants, DARLA BARNES-
SMITH, DEBRA LONG, SAMANTHA
MARTIN and NATHALIE BUGAY

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DECLARATION OF LAURIE MACHADO

Laurie Machado declares:

1. I am the Executive Director for Animal Friends Rescue Project.
2. On September 23, 2024, plaintiff purported to serve Darla Barnes-Smith, Long, Samantha Martin and Nathalie Bugay "c/o Animal Friends Rescue Project" at 160 Fountain Avenue, Pacific Grove, California. None of these named individuals were employed by Animal Friends Rescue Project on that date. No one on behalf of the named individuals

10 If called as a witness I could and would competently testify under oath to the
11 above facts which are personally known to me.

Executed on October 14, 2024, at Pacific Grove, California.

13 I declare under penalty of perjury of the laws of the State of California that the
14 foregoing is true and correct.


Laurie Machado